

## Exhibit 49

David B. Morris

Highly Confidential  
Richmond, VA

January 5, 2005

1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 CIVIL ACTION 01-CV-12257-PBS  
4  
5  
6

7 IN RE: :

8 PHARMACEUTICAL INDUSTRY AVERAGE :

9 WHOLESALE PRICE LITIGATION :  
10

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12 Richmond, Virginia

13 January 5, 2005  
14

15 Deposition upon oral examination of

16 DAVID B. MORRIS, taken on behalf of the Defendants,  
17 before Heidi L. Jeffreys, RDR, CRR, a Notary Public for  
18 the Commonwealth of Virginia at Large, commencing at  
19 1:40 p.m. on the 5th day of January, 2005, at the law  
20 offices of Anthem, Inc., 2235 Staples Mill Road, Suite  
21 401, Richmond, Virginia.  
22

Henderson Legal Services  
(202) 220-4158

EXHIBIT

Exhibit 57

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2 (Pages 2 to 5)

<p>1 Appearances:</p> <p>2 On behalf of the Plaintiff: (By telephone)</p> <p>3 ED NOTARGIACOMO, ESQUIRE</p> <p>4 Hagens Berman</p> <p>5 One Main Street</p> <p>6 Fourth Floor</p> <p>7 Cambridge, Massachusetts 02142</p> <p>8 (617) 482-3700</p> <p>9 On behalf of the Defendants:</p> <p>10 WILLIAM F. CAVANAUGH, ESQUIRE</p> <p>11 Patterson, Belknap, Webb &amp; Tyler, LLP</p> <p>12 1133 Avenue of the Americas</p> <p>13 New York, New York 10036</p> <p>14 (212) 336-2000</p> <p>15 On behalf of Anthem, Inc.:</p> <p>16 JOHN B. NICHOLSON, ESQUIRE</p> <p>17 2235 Staples Mill Road</p> <p>18 Suite 401</p> <p>19 Richmond, Virginia 23230</p> <p>20 (804) 354-7697</p> <p>21 In-house counsel</p> <p>22</p>	<p>1 DAVID B. MORRIS, called as a witness,</p> <p>2 having been first duly sworn, was examined and testified</p> <p>3 as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. CAVANAUGH:</p> <p>6 Q. Would you state your name.</p> <p>7 A. David B. Morris, M-O-R-R-I-S.</p> <p>8 MR. NICHOLSON: We'll have the same</p> <p>9 statement on the record, Bill?</p> <p>10 MR. CAVANAUGH: Similar to the earlier</p> <p>11 deposition, this deposition is being designated by</p> <p>12 Anthem as highly confidential pursuant to the governing</p> <p>13 protective order in this case.</p> <p>14 BY MR. CAVANAUGH:</p> <p>15 Q. By whom are you employed, Mr. Morris?</p> <p>16 A. Anthem Blue Cross Blue Shield.</p> <p>17 Q. When did you join Anthem?</p> <p>18 A. I've been with the company 17 years, so,</p> <p>19 '87, December of '87.</p> <p>20 Q. Could you give me, starting back in 1987,</p> <p>21 the positions you've held within the company and then</p> <p>22 just a brief summary of your responsibilities in those</p>
<p>1 INDEX</p> <p>2</p> <p>3 WITNESS</p> <p>4 ON BEHALF OF THE DEFENDANTS: Examination by: Page</p> <p>5 D. B. Morris Mr. Cavanaugh 4</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9</p> <p>10 No. Description Page</p> <p>11</p> <p>12 Exhibit Morris 002 Integrated prescription drug program 18</p> <p>13 master agreement dated 1-1-98</p> <p>14</p> <p>15 Exhibit Morris 003 Integrated prescription drug program 30</p> <p>16 master agreement dated 1-1-01</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 positions?</p> <p>2 A. I was a market research analyst for</p> <p>3 approximately five years, and my responsibilities were</p> <p>4 initiating market research, reviewing, analyzing market</p> <p>5 research, conducting focus groups, stuff like that.</p> <p>6 I moved to a position within health care</p> <p>7 management. I was like an operations research analyst.</p> <p>8 That was doing -- no, sorry. Outcomes research analyst.</p> <p>9 I was doing outcomes research within health care</p> <p>10 management.</p> <p>11 And then probably about '97 I moved over</p> <p>12 into my current position, which was within the pharmacy</p> <p>13 management department, initially as a clinical</p> <p>14 pharmacist doing things like utilization review,</p> <p>15 formulary management, prior authorization.</p> <p>16 I moved into the manager's position within</p> <p>17 the department about four years ago, so about 2001. At</p> <p>18 this point I'm responsible for the entire operations of</p> <p>19 the department.</p> <p>20 Q. And what is the title of the department?</p> <p>21 A. It's still pharmacy management. We're</p> <p>22 under the health care management division. We</p>

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3 (Pages 6 to 9)

<p>1 coordinate pharmacy benefits for all of our customers, 2 internal as well as external. That includes customer 3 support, training, managing, again, utilization review, 4 prior authorization, appeals, reconsiderations, the 5 benefit overall.</p> <p>6 Q. And you would have held that position since 7 1997 -- well, you would have been in that department 8 since 1997?</p> <p>9 A. Roughly.</p> <p>10 Q. What group within Anthem is responsible for 11 negotiating the pharmacy networks that are utilized by 12 the various Anthem plans?</p> <p>13 A. In '97 it was my department solely 14 responsible -- it was my department's responsibility to 15 do that through our pharmacy benefits manager.</p> <p>16 Roles and responsibilities have -- you 17 know, it's like a moving target. They have changed over 18 the years, and now it's probably -- it's still my 19 department, but we have input, probably, from the 20 medical director, the chief health care officer, as well 21 as probably product strategy, sales and marketing as 22 well.</p>	<p>6 1 A. That's correct. 2 MR. NICHOLSON: And, as in the last 3 deposition, "Anthem" refers to the Virginia entity which 4 was previously Trigon and had other names before that, 5 during the time period -- 6 MR. CAVANAUGH: When I say "Anthem" I'm 7 referring back to the organization you joined back in 8 1987 to the one that sends you a paycheck today. 9 THE WITNESS: Okay. 10 BY MR. CAVANAUGH: 11 Q. And is one of the things that PAID 12 Prescriptions provides to Anthem pursuant to those 13 agreements a network of retail pharmacies? 14 A. Yes. 15 Q. To what extent over the years have you been 16 involved in the negotiations with PAID over those -- the 17 terms of those agreements? 18 MR. NICHOLSON: Referring to the PBM 19 agreements themselves? 20 MR. CAVANAUGH: Yes. 21 THE WITNESS: There was an existing 22 agreement when I came into the department. I played no</p>
<p>7 1 Q. And to whom do you report? 2 A. I report to a vice president, who reports 3 to the chief health care officer. 4 Q. Okay. The vice president is responsible 5 for what department or group? 6 A. He's responsible for pharmacy management 7 department as well as an area called medical informatics 8 Either "infomatics" or "informatics." I've heard it 9 pronounced both ways. 10 Q. And to whom does that person report? 11 A. He reports to the chief health care 12 officer. 13 Q. And who is that? 14 A. Randy Axelrod. 15 Q. Okay. Am I correct that over the years 16 Anthem has had contracts with PAID Prescriptions for the 17 establishment of pharmacy networks? 18 A. I'm sorry. Repeat the first part of the 19 question again. 20 Q. Well, I'll ask it more simply. 21 Am I correct that over the years Anthem has 22 had contracts with a group known as PAID Prescriptions?</p>	<p>9 1 role in the negotiation of those network terms. 2 We did renegotiate the network, and I was 3 involved with that, I think, during the year 2000. We 4 actually went out to bid and PAID -- or Merck-Medco at 5 the time, which is now Medco Health Solutions -- 6 basically as part of our contract re-do. You know, we 7 wanted a new network with different terms, and I was 8 involved with that. 9 Q. Why did you want a new network? 10 A. Deeper discounts. 11 Q. Deeper discounts on the reimbursement to 12 the pharmacy? 13 A. Correct. 14 Q. Now, as part -- in reviewing these 15 agreements with PAID I've noticed that they also include 16 terms for mail order, they've included terms dealing 17 with rebates. To what extent would you have also been 18 involved in those components of these agreements? 19 A. You know, certainly aware internally in 20 discussing with internal management, not directly 21 involved with negotiating with the PBM directly. 22 The way it typically worked would be we</p>

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<p style="text-align: right;">10</p> <p>1 would discuss it internally, and then whoever was the</p> <p>2 main individual who was dealing in the contract</p> <p>3 negotiations with the PBM, that individual would go</p> <p>4 represent the group.</p> <p>5 Q. Was it part --</p> <p>6 A. It was usually internal pharmacy management</p> <p>7 staff.</p> <p>8 Q. All right. So you have an internal</p> <p>9 pharmacy -- well, let me ask the different groups that</p> <p>10 were involved in providing input internally to the</p> <p>11 ultimate negotiation that you had with the PBM.</p> <p>12 What were the different groups that were</p> <p>13 involved in that?</p> <p>14 MR. NICHOLSON: Can you give a time frame?</p> <p>15 BY MR. CAVANAUGH:</p> <p>16 Q. When you came on board in '97 and moving</p> <p>17 forward.</p> <p>18 A. Corporate finance would play a role, sales</p> <p>19 and marketing --</p> <p>20 Q. What role would sales and marketing play?</p> <p>21 A. Really, trying to ensure an adequate</p> <p>22 network, something that wasn't going to disrupt a lot of</p>	<p style="text-align: right;">12</p> <p>1 A. I really don't know the answer to that</p> <p>2 question. I probably have been involved on the</p> <p>3 periphery and have heard some of the kinds of discussion</p> <p>4 around rebates, but usually I didn't participate in any</p> <p>5 of those meetings in any kind of detail.</p> <p>6 Q. Who would be driving those, the discussions</p> <p>7 on that issue?</p> <p>8 A. Previously it was my former boss in</p> <p>9 corporate finance.</p> <p>10 Q. Who is your former boss?</p> <p>11 A. Ron Lyon, L-Y-O-N. He's no longer with the</p> <p>12 company.</p> <p>13 Q. Do you know where he is currently?</p> <p>14 A. Yes, I do.</p> <p>15 Q. What company is he with now?</p> <p>16 A. Towers Perrin.</p> <p>17 Q. Okay. Did Towers Perrin also serve as a</p> <p>18 consultant to Anthem in any of its negotiations?</p> <p>19 A. No. Not to my knowledge, no.</p> <p>20 Q. Okay. Is it possible it could have been</p> <p>21 involved and you wouldn't know about it? I saw a</p> <p>22 document referring to them, which is why I ask the</p>
<p style="text-align: right;">11</p> <p>1 business; really more, you know, disseminating the</p> <p>2 information kind of proactively, really, was kind of how</p> <p>3 I viewed it. They didn't play a relative role and say,</p> <p>4 you need to ask for this particular discount or this</p> <p>5 particular dispensing fee, it's more a collaborative</p> <p>6 discussion of the issue at hand and then coming to a</p> <p>7 consensus as a group. And since they've got to go out</p> <p>8 and sell the product and be able to explain why we did</p> <p>9 it, impact to our customers, et cetera.</p> <p>10 Q. So, corporate finance, sales and marketing.</p> <p>11 What other groups?</p> <p>12 A. Maybe actuarial, but I don't recall</p> <p>13 actuarial getting involved early on.</p> <p>14 Q. What group would be principally responsible</p> <p>15 for evaluating rebates from the PBM?</p> <p>16 A. Probably corporate finance more than</p> <p>17 pharmacy.</p> <p>18 Q. Okay. I mean, did you folks get involved</p> <p>19 in evaluating, for example, what the split should be;</p> <p>20 should there be a sharing of rebates, should Trigon or</p> <p>21 Anthem get a hundred percent, and how that would</p> <p>22 interact with other terms in the agreement?</p>	<p style="text-align: right;">13</p> <p>1 question.</p> <p>2 MR. NICHOLSON: Object to the form.</p> <p>3 THE WITNESS: I suppose it's possible, but</p> <p>4 I don't know, really, what role they would have played</p> <p>5 in those negotiations.</p> <p>6 BY MR. CAVANAUGH:</p> <p>7 Q. Okay. Well, not necessarily in the</p> <p>8 negotiations but in providing advice or consultation to</p> <p>9 Anthem in negotiating with the PBM.</p> <p>10 MR. NICHOLSON: Same objection.</p> <p>11 THE WITNESS: I'm 99 percent sure that</p> <p>12 Towers Perrin was not involved in any kind of</p> <p>13 negotiation with the PBM.</p> <p>14 BY MR. CAVANAUGH:</p> <p>15 Q. Okay. As I looked through the contracts</p> <p>16 that have been produced by Anthem, there seems to be an</p> <p>17 evolution in the names of the various entities with whom</p> <p>18 Anthem was contracting. It started with PAID</p> <p>19 Prescription; then a company known as National was</p> <p>20 involved in providing the mail order component.</p> <p>21 Does that -- did you have any dealings with</p> <p>22 National?</p>

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5 (Pages 14 to 17)

<p>1 A. That was actually -- yes, I did.</p> <p>2 Q. Okay. And then in 1998 Merck-Medco became</p> <p>3 involved. Is that correct?</p> <p>4 A. Correct. And I assume you're just talking</p> <p>5 about changes in names.</p> <p>6 Q. Well, that was my next question.</p> <p>7 Can you tell me what the relationship was</p> <p>8 between those three entities that we just talked about?</p> <p>9 A. PAID Prescriptions was the original entity,</p> <p>10 the original PBM that was started -- I don't know --</p> <p>11 probably 20 years ago, at this point. Its mail service</p> <p>12 business was named National RX Services. I cannot tell</p> <p>13 you whether that was something PAID -- whether that was</p> <p>14 a company PAID purchased or whether it was something</p> <p>15 they built internally, but that's the naming convention</p> <p>16 they used.</p> <p>17 At the point Merck acquired PAID</p> <p>18 Prescriptions it became Merck-Medco, I believe, and then</p> <p>19 eventually Medco Health Solutions, and now -- I'm not</p> <p>20 sure what its name is now.</p> <p>21 Q. Was there a preexisting Medco entity before</p> <p>22 the Merck acquisition?</p>	<p>14</p> <p>1 forward.</p> <p>16</p> <p>2 THE WITNESS: Okay.</p> <p>3 MR. CAVANAUGH: I think the best way to do</p> <p>4 this is to just work through the agreements.</p> <p>5 (There was a pause in the proceedings.)</p> <p>6 BY MR. CAVANAUGH:</p> <p>7 Q. Pursuant to the agreements with PAID</p> <p>8 Prescriptions that you've had over the years, does PAID</p> <p>9 then, in turn, enter into agreements with individual</p> <p>10 pharmacies, or pharmacy chains?</p> <p>11 A. Yes.</p> <p>12 Q. Does Anthem have access to those</p> <p>13 agreements?</p> <p>14 A. No.</p> <p>15 Q. Okay. Does Anthem have any understanding</p> <p>16 of the relationship between what it has agreed to pay</p> <p>17 PAID for reimbursement and what PAID, in turn, has</p> <p>18 negotiated with a particular retail pharmacy or pharmacy</p> <p>19 chain for reimbursement?</p> <p>20 A. Was your question do we know what we're</p> <p>21 paying PAID and then what PAID is, in return, paying the</p> <p>22 pharmacy provider?</p>
<p>15</p> <p>1 A. There may have been, yes.</p> <p>2 Q. Okay.</p> <p>3 A. Yeah, I think there probably was, because</p> <p>4 when Merck bought them that's when they became</p> <p>5 Merck-Medco.</p> <p>6 Q. Do you know what the arrangement was</p> <p>7 between PAID Prescriptions and Merck-Medco?</p> <p>8 A. My assumption was it was one and the same</p> <p>9 company.</p> <p>10 MR. NICHOLSON: I'll just tell you he</p> <p>11 doesn't want you to assume, and I don't, either, but if</p> <p>12 you know, you certainly need to answer the question.</p> <p>13 THE WITNESS: And by "know" I assume you</p> <p>14 mean some way I verified on my own, independent of</p> <p>15 having a discussion with these folks.</p> <p>16 BY MR. CAVANAUGH:</p> <p>17 Q. It depends on the context of the question.</p> <p>18 It may be something you came to understand by virtue of</p> <p>19 being in the business many years --</p> <p>20 MR. NICHOLSON: There's a basis of fact</p> <p>21 beyond mere speculation or assumption, so the line is</p> <p>22 not always black, but I just offer that caution going</p>	<p>17</p> <p>1 Q. Yes.</p> <p>2 A. Yes, we know what that relationship is.</p> <p>3 Q. Okay. How do you know what PAID is paying</p> <p>4 the pharmacy provider?</p> <p>5 A. I suppose, when I stop and think about it</p> <p>6 now, I think we really probably don't know what they're</p> <p>7 paying them. We know what we asked them to set up as a</p> <p>8 network in terms of the network discount, but in terms</p> <p>9 of seeing the check and seeing -- you know, verifying</p> <p>10 what the pharmacy billed and what they got reimbursed,</p> <p>11 we do not have knowledge of that.</p> <p>12 Q. Okay. I understand you don't see the</p> <p>13 checks that are cut, that sort of thing, but my question</p> <p>14 isn't -- my question is a little different, which is do</p> <p>15 you have some understanding as to the reimbursement</p> <p>16 formula that PAID is using with its -- with the pharmacy</p> <p>17 providers that it contracts with?</p> <p>18 A. Yes. I mean, that's what we specify, you</p> <p>19 know, PAID to do for us; set up a network with the</p> <p>20 following terms.</p> <p>21 Q. All right. I just wanted to make sure that</p> <p>22 I understood. So, when I look at your contract with</p>

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<p>18</p> <p>1 PAID and it says, for example, set up a network where</p> <p>2 pharmacists are reimbursed at AWP minus 18 and no</p> <p>3 dispensing fee --</p> <p>4 A. Right.</p> <p>5 Q. -- it's your understanding, then, that PAID</p> <p>6 establishes a network with that as the reimbursement</p> <p>7 formula?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 MR. CAVANAUGH: Why don't we mark this as</p> <p>11 Exhibit Morris 002.</p> <p>12 (The document was marked as Exhibit Morris 002.)</p> <p>13 (There was a pause in the proceedings.)</p> <p>14 BY MR. CAVANAUGH:</p> <p>15 Q. We've marked as Anthem VA 002 a document</p> <p>16 entitled "Integrated Prescription Drug Program Master</p> <p>17 Agreement" bearing the date entered into as of January</p> <p>18 1st, 1998.</p> <p>19 A. Okay.</p> <p>20 Q. Are you familiar with this agreement?</p> <p>21 A. Yes.</p> <p>22 Q. Now, this is an agreement between PAID</p>	<p>20</p> <p>1 status report.</p> <p>2 MR. NICHOLSON: It's actually a letter</p> <p>3 dated November 3, 1998 which is attached.</p> <p>4 BY MR. CAVANAUGH:</p> <p>5 Q. Let me ask you to turn to page 9 of the</p> <p>6 agreement, page 9, paragraph 6.2, Formulary Rebates. It</p> <p>7 states, "Merck-Medco Managed Care, LLC receives</p> <p>8 formulary rebates from certain drug manufacturers as a</p> <p>9 result of the inclusion of such manufacturer branded</p> <p>10 products on the formulary. PAID will provide Trigon</p> <p>11 with 70 percent of the formulary rebates received by</p> <p>12 Medco based on the dispensing of each manufacturer's</p> <p>13 formulary drugs under Trigon's program." And it goes on</p> <p>14 to say, "PAID shall retain 30 percent."</p> <p>15 A. Uh-huh.</p> <p>16 Q. I understand you weren't involved in the</p> <p>17 negotiations, but did you come to understand how the</p> <p>18 parties arrived at that 70/30 split of rebates?</p> <p>19 A. No. I -- no. Probably standard business</p> <p>20 practice on the part of the PBM, would be my assumption,</p> <p>21 but, again, that's an assumption.</p> <p>22 Q. Were you aware prior to this agreement that</p>
<p>19</p> <p>1 Prescriptions, Merck-Medco and Trigon, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Were you involved in the negotiation of</p> <p>4 this agreement?</p> <p>5 A. No.</p> <p>6 Q. Now, you had come into the group in 1997.</p> <p>7 Why were you not involved in the negotiation of this</p> <p>8 agreement?</p> <p>9 A. I think this agreement was already in the</p> <p>10 works when I came into the department. In other words,</p> <p>11 they had been discussing it for some extensive period of</p> <p>12 time. And in my initial role in the department I was a</p> <p>13 clinical pharmacist first, so I was not directly</p> <p>14 involved in any kind of management of the business side</p> <p>15 of the benefit. This was -- actually, I think, the</p> <p>16 medical policy director at the time was Larry Colley, if</p> <p>17 I recall correctly.</p> <p>18 Yeah. There's his name right there</p> <p>19 (indicating).</p> <p>20 Q. You're referring to the signature page of</p> <p>21 the agreement?</p> <p>22 A. Yeah -- or this is actually some project</p>	<p>21</p> <p>1 the agreement with PAID provided for a hundred percent</p> <p>2 of the rebates to go to Trigon -- or Anthem?</p> <p>3 A. Am I aware of that?</p> <p>4 Q. Yes.</p> <p>5 A. No.</p> <p>6 Q. Was there a subsequent amendment to this</p> <p>7 agreement with PAID and with Merck that adjusted the</p> <p>8 rebates -- adjusted this rebate formula?</p> <p>9 A. An amendment to this agreement?</p> <p>10 Q. Yes.</p> <p>11 A. No, not to my knowledge.</p> <p>12 Q. Was there a new agreement entered into with</p> <p>13 PAID and with Merck that dealt with, among other things,</p> <p>14 rebates?</p> <p>15 A. Yes, there was.</p> <p>16 Q. And as part of that agreement did Anthem</p> <p>17 negotiate for 100 percent of the rebates?</p> <p>18 A. No, not technically.</p> <p>19 Q. Okay. Why not?</p> <p>20 A. We negotiated a guaranteed amount on a</p> <p>21 per-claim basis that was really independent of rebates.</p> <p>22 I think in our mind we were replacing rebates with this</p>



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<p>22</p> <p>1 amount, but we more or less told Medco, we don't care 2 what your rebates are, what are you willing to guarantee 3 us so that we can plan and so that we can, you know, 4 give this money back to our customers on an ongoing 5 basis. 6 Q. And was that the agreement that you 7 negotiated with PAID and with Merck -- with Medco? 8 A. I was involved with that one, yes. 9 Q. Okay. And what you just described to me, 10 was that the outcome of the negotiation? 11 A. Yes. 12 Q. Explain to me why Anthem was of the view 13 that it didn't care about the rebates that Medco got; it 14 instead wanted to focus on a guaranteed return to 15 Anthem. 16 MR. NICHOLSON: Do you want him to expand 17 upon what -- he's already addressed part of that, I 18 believe. 19 BY MR. CAVANAUGH: 20 Q. Yeah, if you could, just explain to me what 21 Anthem's thinking was in seeking this new type of -- as 22 you saw it, this new type of arrangement.</p>	<p>24</p> <p>1 also the result of soliciting multiple offers from PBMs? 2 A. I don't know with absolute certainty, but 3 it was my impression that it was not an RFP process, 4 again, coming into it kind of in the middle or toward 5 the very end of the entire negotiation. 6 Q. As I look at paragraph 6.3 in the 1998 7 agreement there is a reference to "guaranteed formulary 8 rebates." 9 Could you take a look at that provision and 10 tell me how the provision you negotiated in the 11 subsequent agreement differed? 12 (There was a pause in the proceedings.) 13 MR. NICHOLSON: Do you want to point us to 14 the language you're looking at? 15 BY MR. CAVANAUGH: 16 Q. Well, it's more the term "guaranteed 17 formulary rebates," not in the body. The heading is 18 "Guaranteed Formulary Rebates," and I took from your 19 answer earlier when you referred to the benefits you saw 20 in the 2001 agreement that there were guaranteed 21 payments from Medco to Anthem, so I was wondering how 22 they differed.</p>
<p>23</p> <p>1 A. It was a way of eliminating the 2 uncertainty, I guess, or unknown value of rebates on a 3 going-forward basis. PBMs held all the contracts; PBMs 4 talked with the manufacturers. We had no way of knowing 5 what the PBM had agreed to with the manufacturer, so we 6 had no way to project going forward what those rebates 7 were going to be. 8 In addition, Medco was notoriously delayed 9 in paying those moneys, so in some cases we were nine to 10 twelve months out from the actual rebate period where 11 the rebates were supposedly earned, and the time value 12 of money being what it is, we wanted those moneys a 13 little quicker than nine to twelve months out. 14 We were in a competitive bid situation, 15 too, so, you know, we threw it out there among two or 16 three different PBMs that we were negotiating with at 17 the time. 18 Q. What other PBMs were you negotiating with? 19 A. Express Scripts, and there was another one 20 that eventually got acquired by Medco, I think, 21 actually. I don't recall the name of it. 22 Q. The 1998 agreement with Medco, was that</p>	<p>25</p> <p>1 MR. NICHOLSON: Let me just object, because 2 I think his prior answer distinguished the 2001 3 methodology from this and explained the benefits. 4 But if you can add to that, please do. 5 THE WITNESS: As I recall, it is -- it's 6 the language that specifically refers to "branded 7 formulary claims." 8 That's what this guarantee is, and, again, 9 since Medco holds all the contracts, they know what's 10 formulary and what's not formulary from their 11 perspective. And we didn't always follow their 12 formulary recommendations. 13 So, they may know it's a brand -- I mean, 14 we know, certainly, the difference between a brand and a 15 generic scrip, but we don't know what their formulary 16 consisted of in absolute terms. 17 BY MR. CAVANAUGH: 18 Q. But as part of this agreement weren't you 19 supposed to adopt the Medco formularies? 20 A. We were, in large part, but we did not 21 always do that in absolute terms. 22 Q. I see.</p>



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<p>26</p> <p>1 A. And, again, what this is guaranteeing is</p> <p>2 those branded formulary claims. The subsequent</p> <p>3 agreement, as I recall, took that language out and said</p> <p>4 it's on a per-claim basis. We don't want to have to try</p> <p>5 and figure out what's formulary versus non-formulary.</p> <p>6 We want to be able to at the end of the month count our</p> <p>7 claims and say, you owe us this. So, it was much easier</p> <p>8 to get to. This, you had to rely on the PBM to tell</p> <p>9 you, this is what it is, take our word for it.</p> <p>10 Q. And the reason you would have to rely on</p> <p>11 that is that there could be differences between the</p> <p>12 Medco-formulary and the formulary that Anthem actually</p> <p>13 had decided to utilize for certain plans?</p> <p>14 A. Uh-huh. And they're earning moneys on</p> <p>15 claims, and only they know they're earning it. I mean,</p> <p>16 they could theoretically -- you know, because we don't</p> <p>17 know -- withhold parts of those moneys, if they chose.</p> <p>18 Q. Did Anthem have the right under these</p> <p>19 agreements to go in and audit?</p> <p>20 A. I'm sure we did.</p> <p>21 Q. Did Anthem ever audit?</p> <p>22 A. Not for this agreement.</p>	<p>28</p> <p>1 after the new agreement was in place in 2001?</p> <p>2 A. Yes.</p> <p>3 Q. What were the results of that audit?</p> <p>4 A. Paraphrasing at a real high level here,</p> <p>5 errors both in the positive and the negative, moneys</p> <p>6 that were not paid that should have been paid, and</p> <p>7 moneys that were paid but should not have been paid, and</p> <p>8 the amounts in both a positive and negative direction</p> <p>9 really kind of netted out to zero.</p> <p>10 So, the overall assessment was, you know,</p> <p>11 Medco's got some real problems in terms of how they</p> <p>12 administer and pay rebate moneys out from a systems and</p> <p>13 accounting perspective, but we think you got everything</p> <p>14 that your contract more or less said you were going to</p> <p>15 get in terms of those rebate moneys.</p> <p>16 Q. And were those types of system errors</p> <p>17 undone by virtue of the 2001 agreement and the system</p> <p>18 that was used for rebates under that agreement?</p> <p>19 A. In my opinion, yes, they probably were.</p> <p>20 Q. And that's because you're now working on a</p> <p>21 guaranteed per-claim --</p> <p>22 A. Correct.</p>
<p>27</p> <p>1 Q. Has Anthem ever --</p> <p>2 A. Wait a minute. I take that back. I think</p> <p>3 maybe we did audit for this agreement.</p> <p>4 Q. For the 1998 agreement?</p> <p>5 A. I think we did.</p> <p>6 Q. Do you remember when you did that audit?</p> <p>7 A. I'd be guessing. I mean, it's --</p> <p>8 MR. NICHOLSON: Don't guess.</p> <p>9 BY MR. CAVANAUGH:</p> <p>10 Q. I don't want you to guess, but was it</p> <p>11 during the period of time when this agreement was in</p> <p>12 place?</p> <p>13 A. Not when this agreement was in place, no.</p> <p>14 Q. So, at some point subsequent -- the 1998</p> <p>15 agreement ran from 1998 through 2001, when you did the</p> <p>16 new agreement?</p> <p>17 A. Uh-huh.</p> <p>18 MR. NICHOLSON: You need to say "yes" so</p> <p>19 she can pick that up.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. CAVANAUGH:</p> <p>22 Q. Was the audit of the 1998 agreement done</p>	<p>29</p> <p>1 Q. How does the per-claim work in conjunction</p> <p>2 with a formulary?</p> <p>3 A. Well, as I recall, without seeing the other</p> <p>4 agreement -- although I'm sure you have it.</p> <p>5 Q. Yeah, I can show it to you if it would help</p> <p>6 to look at it.</p> <p>7 MR. NICHOLSON: We can do that right now,</p> <p>8 if you need to see it.</p> <p>9 THE WITNESS: As I recall now, based on how</p> <p>10 the subsequent agreement was worded, we had to agree in</p> <p>11 large part to attempt to work with Medco to follow their</p> <p>12 formulary recommendations but, it ultimately gave us the</p> <p>13 final decision as to whether or not we were going to</p> <p>14 accept a drug and add it to our formulary. We weren't</p> <p>15 going to take something, necessarily, that -- here's the</p> <p>16 thinking behind making that part of the agreement:</p> <p>17 We weren't going to take something that</p> <p>18 paid higher rebates just because it paid higher rebates,</p> <p>19 when it could cost our customers more because it's a</p> <p>20 more expensive drug.</p> <p>21 MR. NICHOLSON: If we're going to go</p> <p>22 through the terms of the contract it may make sense for</p>

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<p>1 you to put it in front of him right now.</p> <p>2 MR. CAVANAUGH: Yeah, I should have it.</p> <p>3 (There was a pause in the proceedings.)</p> <p>4 MR. CAVANAUGH: Why don't we mark this as</p> <p>5 Exhibit Morris 003.</p> <p>6 We'll mark as Anthem VA Exhibit Morris 003 the</p> <p>7 Integrated Prescription Drug Program Master Agreement entered</p> <p>8 into as of January 1st, 2001.</p> <p>9 (The document was marked as Exhibit Morris 003.)</p> <p>10 MR. NOTARGIACOMO: Can I get the Bates</p> <p>11 numbers for that document?</p> <p>12 MR. CAVANAUGH: A-VA 09010091. And I</p> <p>13 should probably also put on the record for Anthem VA 002.</p> <p>14 the Bates numbers are A-VA 09010055.</p> <p>15 BY MR. CAVANAUGH:</p> <p>16 Q. You've been referring in your testimony</p> <p>17 earlier today to a subsequent agreement to the 1998</p> <p>18 agreement. Is Anthem VA 003 that agreement?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Why don't you take a moment to look at it</p> <p>21 to refresh yourself as to how the rebates worked and</p> <p>22 were different from how the rebates worked under the '98</p>	<p>1 defined, built, the retail network were typically paying</p> <p>2 for the 30-day supply. So mail service was roughly</p> <p>3 paying for the 90-day supply, so roughly three times the</p> <p>4 amount of drug and cost.</p> <p>5 Q. And what would the benefit be to Anthem or</p> <p>6 to Merck of having the per-claim rebate different for</p> <p>7 the retail pharmacy managed program versus the retail</p> <p>8 pharmacy non-managed program?</p> <p>9 A. The managed program really was using</p> <p>10 Medco's formulary and agreeing to use the formulary in a</p> <p>11 manner as specified in this contract, or, in other</p> <p>12 words, working with Medco to define our formulary but</p> <p>13 agreeing to work with them closely in doing so.</p> <p>14 Q. And when that was done a higher rebate</p> <p>15 would be paid to Anthem, correct?</p> <p>16 A. Correct.</p> <p>17 Q. If I can go back to the '98 agreement for a</p> <p>18 moment, there was a reference there to a -- in 6.4 to</p> <p>19 "trend incentives."</p> <p>20 Can you explain to me what trend incentives</p> <p>21 are? What's the concept?</p> <p>22 A. The concept was if we, working jointly,</p>
<p>1 agreement.</p> <p>2 (There was a pause in the proceedings.)</p> <p>3 THE WITNESS: Just the rebates</p> <p>4 specifically?</p> <p>5 BY MR. CAVANAUGH:</p> <p>6 Q. Yes.</p> <p>7 A. Okay.</p> <p>8 Q. Does looking at Anthem VA 003 confirm your</p> <p>9 recollection that the rebate is on a per-claim basis?</p> <p>10 A. Yes.</p> <p>11 Q. Where would that language appear?</p> <p>12 A. It begins on page 11, 6.3. And if you turn</p> <p>13 to page 12 those amounts, retail and mail managed,</p> <p>14 retail and mail non-managed, and the per-claim amounts</p> <p>15 are to the right of that.</p> <p>16 Q. Now, if I look here, the per-claim -- per</p> <p>17 paid claim -- is this the rebate amount, the \$1.87, the</p> <p>18 \$6.36, the \$1.25?</p> <p>19 A. Yes.</p> <p>20 Q. Why is the mail service rebate so much</p> <p>21 higher than the retail pharmacy?</p> <p>22 A. Well, I mean, by the way the program is</p>	<p>1 could manage the increase of our drug trend then we were</p> <p>2 willing to pay Medco some amount of money to do that.</p> <p>3 In other words, rather than them just paying for claims</p> <p>4 and collecting rebate moneys and doling those out as</p> <p>5 they saw fit, you know, if they helped us actually</p> <p>6 manage the trend, in other words, hold costs down for us</p> <p>7 and our customers -- that was the intent of this. I</p> <p>8 mean, I think it was so complex not many people could</p> <p>9 understand exactly how we were going to get there, and I</p> <p>10 don't think we even came close to the thresholds. I</p> <p>11 think Medco just kind of, you know, didn't know what to</p> <p>12 make of it.</p> <p>13 Q. Okay. Were there -- was the trend</p> <p>14 incentives concept continued in 2001?</p> <p>15 MR. NICHOLSON: In the contract?</p> <p>16 BY MR. CAVANAUGH:</p> <p>17 Q. In the contract.</p> <p>18 A. To the best of my recollection, no.</p> <p>19 Q. Sticking with the 1998 agreement, there are</p> <p>20 references there -- let me take it back. This is</p> <p>21 paragraph 6.2.</p> <p>22 A. Uh-huh.</p>

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10 (Pages 34 to 37)

<p>34</p> <p>1 Q. There's a reference there to "formulary" --</p> <p>2 MR. NICHOLSON: Wait a second. We may be</p> <p>3 missing a page.</p> <p>4 THE WITNESS: Is there a 6.2?</p> <p>5 MR. CAVANAUGH: Yeah. You were looking at</p> <p>6 it before. That's how we got to the 70/30.</p> <p>7 I'm sorry. Page 9.</p> <p>8 MR. NICHOLSON: It's out of order. Okay.</p> <p>9 BY MR. CAVANAUGH:</p> <p>10 Q. I referred you earlier in my questions to</p> <p>11 the initial few sentences dealing with the defined term</p> <p>12 "formulary rebates," but there's a sentence that follows</p> <p>13 that states, "Medco also receives and retains additional</p> <p>14 rebates and/or fees from certain manufacturers which may</p> <p>15 take into account various factors including the</p> <p>16 utilization of certain drugs within their expected</p> <p>17 therapeutic categories for Medco's book of business in</p> <p>18 aggregate as a result of various commitments, services</p> <p>19 and programs, including but not limited to formularies."</p> <p>20 What understanding did you have of other</p> <p>21 types of rebates and fees that Medco might be securing</p> <p>22 from one or more manufacturers?</p>	<p>36</p> <p>1 A. No.</p> <p>2 Q. Let me ask you to turn to page 23 of the</p> <p>3 1998 agreement, Anthem VA Exhibit Morris 002. And this</p> <p>4 is entitled "Schedule B, Programming Pricing Terms."</p> <p>5 A. Uh-huh.</p> <p>6 Q. To what extent were you involved in</p> <p>7 creating these program pricing terms?</p> <p>8 A. For this agreement, not at all. I was not</p> <p>9 involved.</p> <p>10 Q. So, this is something that would have</p> <p>11 existed or was well into existence by the time you came</p> <p>12 into the group?</p> <p>13 A. Yes.</p> <p>14 Q. As a result of coming into the group did</p> <p>15 you become familiar with these various reimbursement</p> <p>16 terms?</p> <p>17 A. Yes.</p> <p>18 Q. What are each of these groups that are</p> <p>19 identified on page 23, the Coordinated Care Network II,</p> <p>20 Coordinated Care Network III, Retail Maintenance</p> <p>21 Network, Trigon HMO Network? Can you explain each of</p> <p>22 those to me and how they differ?</p>
<p>35</p> <p>1 A. We had no direct knowledge of what, if any,</p> <p>2 moneys they were collecting there.</p> <p>3 Q. Were you familiar with a concept known as</p> <p>4 administrative fees?</p> <p>5 A. Internal to a PBM?</p> <p>6 Q. Yes.</p> <p>7 A. Sure.</p> <p>8 Q. And had you heard of the concept of PBMs</p> <p>9 charging administrative fees to manufacturers?</p> <p>10 A. Sure.</p> <p>11 Q. Does -- let me ask you when you -- what was</p> <p>12 your first involvement with PBM contracting such as the</p> <p>13 '98 and 2001 contract we're talking about?</p> <p>14 MR. NICHOLSON: I'm sorry. Could you give</p> <p>15 some definition to "involvement"?</p> <p>16 BY MR. CAVANAUGH:</p> <p>17 Q. Sure. Before you came into the unit in</p> <p>18 1997 had you had any prior involvement with PBMs and the</p> <p>19 PBM business in general?</p> <p>20 A. No.</p> <p>21 Q. Had you had any prior involvement with</p> <p>22 pharmacy networks?</p>	<p>37</p> <p>1 A. They are all pharmacy networks, different</p> <p>2 pharmacy networks. Medco owned the Coordinated Care</p> <p>3 Networks II and III, and they used those nationally for</p> <p>4 their entire book of business, is what I was told.</p> <p>5 Q. When you say they owned them, what do you</p> <p>6 mean?</p> <p>7 A. They owned the contract with the pharmacy,</p> <p>8 they negotiated the network, they maintained the</p> <p>9 network. The terms specified for network participation</p> <p>10 were, you know, created and maintained by Medco, not by</p> <p>11 us.</p> <p>12 Q. They didn't own the pharmacy?</p> <p>13 A. No.</p> <p>14 Q. Okay. But they were the direct contracting</p> <p>15 party with the pharmacy?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. What about Retail -- 1.3, the Retail</p> <p>18 Maintenance Network?</p> <p>19 A. Again, that's another pharmacy network.</p> <p>20 Medco built that network at our request, and the intent</p> <p>21 of that network was to allow retail pharmacies -- most</p> <p>22 specifically in Virginia, but I'm sure if we had some</p>

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<p style="text-align: right;">38</p> <p>1 outside the state we would have taken those as well --</p> <p>2 but retail pharmacies in Virginia to dispense a 90-day</p> <p>3 supply of drug similar to a mail service pharmacy.</p> <p>4 And the HMO -- Trigon HMO Network was a</p> <p>5 pharmacy network they built exclusively for us using</p> <p>6 terms that we specified.</p> <p>7 Q. Now, each of these networks have what</p> <p>8 appear to be different reimbursement terms. Would you</p> <p>9 agree with that?</p> <p>10 A. Yes.</p> <p>11 Q. How are these different terms for each</p> <p>12 network arrived at?</p> <p>13 MR. NICHOLSON: Again, you're asking him a</p> <p>14 question about a contract he was not involved in</p> <p>15 negotiating.</p> <p>16 BY MR. CAVANAUGH:</p> <p>17 Q. Well, let me ask it -- in 2001, for that</p> <p>18 contract, was there also a Schedule B for program</p> <p>19 pricing terms?</p> <p>20 A. I'm sure there's something in there about</p> <p>21 network terms, yes.</p> <p>22 Q. And were there multiple networks again?</p>	<p style="text-align: right;">40</p> <p>1 network. Originally there was the CCN II, and then my</p> <p>2 assumption was that Medco built a new network with</p> <p>3 slightly different terms and called that CCN III,</p> <p>4 primarily different lines of business and were</p> <p>5 negotiated at different points in time.</p> <p>6 And, theoretically, a pharmacy could</p> <p>7 participate in one or more of these networks. They</p> <p>8 could be a CCN II, a CCN III, an HMO network provider.</p> <p>9 Q. And how they got reimbursed would depend</p> <p>10 upon the individual customer's plan?</p> <p>11 A. Benefits, right, and eligibility, what</p> <p>12 group they were loaded with, and --</p> <p>13 Q. I see. Let me draw your attention -- and</p> <p>14 you can -- we'll look at the 2001 agreement for a</p> <p>15 moment.</p> <p>16 Under the Trigon Retail Maintenance Network</p> <p>17 do you see there's a reference to AWP minus 15 percent</p> <p>18 with no dispensing fee, but then if you look at</p> <p>19 Coordinated Care Network III it's AWP minus 13 plus a</p> <p>20 dispensing fee.</p> <p>21 Why would you use a dispensing fee for</p> <p>22 certain networks and not for others?</p>
<p style="text-align: right;">39</p> <p>1 A. I'm not sure about that.</p> <p>2 MR. NICHOLSON: You have the contract</p> <p>3 there, if you want to look at it.</p> <p>4 BY MR. CAVANAUGH:</p> <p>5 Q. Yeah, why don't we take a look at that.</p> <p>6 (There was a pause in the proceedings.)</p> <p>7 THE WITNESS: Yes, there are, Schedule B,</p> <p>8 page 30.</p> <p>9 BY MR. CAVANAUGH:</p> <p>10 Q. Okay. And, again, does it appear under the</p> <p>11 2001 agreement that there are different reimbursement</p> <p>12 terms?</p> <p>13 A. Yes.</p> <p>14 Q. What would -- how is it that each of these</p> <p>15 networks had different reimbursement rates?</p> <p>16 A. Developed at different points in time for</p> <p>17 different lines of business.</p> <p>18 Q. Can you give me an example?</p> <p>19 A. Prior to us -- prior to us developing an</p> <p>20 HMO we had a broad network of pharmacies that covered</p> <p>21 the State of Virginia as well as nationwide, and</p> <p>22 those -- those lines of business for HMO used the CCN.</p>	<p style="text-align: right;">41</p> <p>1 A. I have no real idea why it was set up this</p> <p>2 way, to be different. I mean, I would -- again, I'm</p> <p>3 assuming that you're trying to incent some behavior</p> <p>4 either on the part of the participating provider and/or,</p> <p>5 you know, the customer.</p> <p>6 Q. Would you agree with me that from a</p> <p>7 pharmacist's standpoint they're going to look at the</p> <p>8 total reimbursement they're going to get, whether it's</p> <p>9 in the form of an AWP minus 13 plus a dispensing fee or</p> <p>10 just an AWP minus 15 percent?</p> <p>11 A. They should look at the total amount, yes.</p> <p>12 Whether they do or not I can't tell you. I'm always</p> <p>13 surprised that most of these guys don't even know, you</p> <p>14 know, what their network terms are. They sign these</p> <p>15 agreements and don't look that closely at them,</p> <p>16 apparently.</p> <p>17 Q. But you'd agree with me that a pharmacist</p> <p>18 looking at what they're going to get paid for dispensing</p> <p>19 a drug -- they're going to look at the total</p> <p>20 reimbursement page, no matter whether it's driven by</p> <p>21 just AWP minus a number or driven by AWP plus a</p> <p>22 dispensing fee?</p>

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<p style="text-align: right;">42</p> <p>1 MR. NICHOLSON: I'll object. You're asking 2 him to speculate as to what a pharmacist would do. 3 MR. CAVANAUGH: Well, based upon his 4 experience. 5 THE WITNESS: If they want to make a profit 6 they should look at the total reimbursement of the whole 7 package, and it's not just brands or just generics, it's 8 the combination. 9 BY MR. CAVANAUGH: 10 Q. And, certainly, when Anthem is evaluating 11 reimbursement rates it will look at what the total cost 12 to it is going to be? 13 A. Yes. 14 Q. And it would include, certainly, a 15 dispensing fee as part of that? 16 A. Yes. 17 Q. Let's talk about how Anthem goes about 18 determining retail reimbursement rates. 19 A. Okay. 20 Q. Is that something your group is responsible 21 for? 22 A. At least in terms of initiating it as a</p>	<p style="text-align: right;">44</p> <p>1 To what extent has Anthem looked at the 2 basis on which pharmacists actually seek reimbursement? 3 A. I'm not sure I understand the question. 4 I'm sorry. 5 Q. Well, there's a reference to the pharmacy's 6 usual and customary prices submitted. How does Anthem 7 determine usual and customary price? 8 A. For example, we may know that pharmacies 9 have what's called loss leaders. They may intentionally 10 price the product below their cost to get traffic in the 11 store. For example, oral contraceptives. I mean, a lot 12 of pharmacies are smart. They know if they can get a 13 young female of childbearing age chances are she's 14 married and with children, and so she's going to buy 15 other things while she's in the store, so they'll sell 16 their oral contraceptives \$2 less than what it actually 17 costs them. 18 In those situations we want to allow our 19 customer to take advantage of that competitive situation 20 and get the drug at the lowest possible cost. In other 21 words, not have the calculation kick in with the AWP, 22 but if your birth control pills cost \$20 and you're</p>
<p style="text-align: right;">43</p> <p>1 topic for discussion. I think it's a -- it really is a 2 collaborative kind of discussion here internally and 3 then with the PBM as well. The PBM's experience 4 probably is going to tell them -- you know, they know 5 what other kinds of networks they have and we don't, so 6 they might could tell us, based on the marketplace, 7 here's some things you might consider. 8 Q. And how is it that -- strike that. 9 How does Anthem go about calculating costs, 10 the reimbursement cost? 11 A. You can take these formulas and simply 12 apply them to the prices of the products. 13 Q. Okay. And when you do that do you include 14 the dispensing fee? 15 A. Yes, you would. 16 Q. Now, if we look at any one of these 17 formulas they tend to provide for reimbursement in an 18 amount equal to the lowest of, one, the pharmacist's 19 usual and customary prices submitted; two, taking Trigon 20 Retail Maintenance Network, for example, AWP minus 15 21 percent with no dispensing fee, or the MAC where 22 applicable with no dispensing fee.</p>	<p style="text-align: right;">45</p> <p>1 selling them for \$15, that's the price the customer 2 pays, less any co-pays. 3 Q. Now, how do you go about determining, for 4 example, using your example of oral contraceptives, that 5 they're selling them for \$2 less than it actually costs 6 them to acquire? 7 A. Well, we wouldn't up front. I would assume 8 that it's built into Medco's system. They have a 9 pricing file that has AWP costs on it. They could 10 compute it instantaneously with a computer, and, so, 11 they know the price being submitted by the pharmacy at 12 the point of sale is actually higher than or less than 13 that AWP price, so their system, when it's adjudicating 14 the claim, would make that determination, and it would 15 automatically defer to the lower-of. 16 Q. Okay. Are you familiar with a term known 17 as WAC? 18 A. Yes. 19 Q. What's your understanding of WAC? 20 A. Wholesale acquisition cost is what it 21 stands for, and it's more or less, though not in 22 absolute terms, what most parties who are willing to</p>



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<p>46</p> <p>1 purchase drugs for retail or resale could acquire the</p> <p>2 drugs from a wholesaler.</p> <p>3 Q. Okay. And is that -- is WAC typically a</p> <p>4 published number?</p> <p>5 A. I think it is.</p> <p>6 Q. Do you have any understanding of the</p> <p>7 relationship between AWP and WAC?</p> <p>8 A. A rough understanding of the relationship.</p> <p>9 Q. And what's that rough understanding?</p> <p>10 A. In aggregate, looking across the entire</p> <p>11 market basket of drugs, you know, WAC is somewhere</p> <p>12 between 20 and 25, 26 percent less than the AWP cost.</p> <p>13 It's some amount less than average wholesale price.</p> <p>14 Q. Okay. And --</p> <p>15 A. It depends on the drug, the market area,</p> <p>16 et cetera, et cetera.</p> <p>17 Q. Sure. When did you first become familiar</p> <p>18 with these terms, WAC and AWP?</p> <p>19 A. Probably 25 years ago when I was working in</p> <p>20 pharmacies. I mean, we would order from a wholesaler,</p> <p>21 and they would have the wholesale acquisition cost</p> <p>22 listed and you could decide whether you wanted to order</p>	<p>48</p> <p>1 Q. And, so, if a retailer was paying, 25 years</p> <p>2 ago, WAC, a hospital would be paying substantially below</p> <p>3 WAC?</p> <p>4 A. Again, depending on the product, depending</p> <p>5 on the agreements the hospital may or may not have had</p> <p>6 with a given manufacturer you could have gotten -- if it</p> <p>7 was a Roche vaccine or something you could get it at a</p> <p>8 discount if you bought in bulk, and that was a lot</p> <p>9 different than acquiring it from the wholesaler, sure.</p> <p>10 Q. Okay. I'm talking now about what a</p> <p>11 hospital would buy at compared to what a retailer would</p> <p>12 buy at for the same product.</p> <p>13 If we go back 25 years ago to when you were</p> <p>14 working in hospital and retail pharmacies, would I be</p> <p>15 correct that you understood that retailers were paying</p> <p>16 higher prices than hospitals for the same products?</p> <p>17 A. Again, it depends on the size of the</p> <p>18 entity. I mean, there were still chains back then, so</p> <p>19 chains could probably do better than -- chain retail</p> <p>20 pharmacies could do better than a small local hospital.</p> <p>21 A large hospital chain like HCA, though, could</p> <p>22 definitely do better than the mom-and-pop pharmacy down</p>
<p>47</p> <p>1 a bottle of 30 or a bottle of a thousand.</p> <p>2 Q. And were there such -- were there AWP's at</p> <p>3 that point in time?</p> <p>4 A. As I recall, there were. I don't think</p> <p>5 they were listed with the wholesaler, necessarily, but</p> <p>6 things like Red Book, Blue Book have always been around.</p> <p>7 Q. And was there this published difference</p> <p>8 between AWP and WAC?</p> <p>9 A. Again, I would assume that there was, based</p> <p>10 on the knowledge that I could -- that I had access to</p> <p>11 the WAC price and that the AWP price was published. If</p> <p>12 someone was willing to take the time to figure it out</p> <p>13 I'm sure you could tell what the differences were. I</p> <p>14 never did, but...</p> <p>15 Q. This was 25 years ago. Where were you</p> <p>16 working at the time?</p> <p>17 A. Primarily, hospital pharmacies; a little</p> <p>18 bit of retail work.</p> <p>19 Q. Back then were you aware that hospitals,</p> <p>20 for example, were able to get steep discounts from</p> <p>21 manufacturers?</p> <p>22 A. Sure.</p>	<p>49</p> <p>1 on the corner.</p> <p>2 Q. So if a retailer was paying at WAC, quite</p> <p>3 often a hospital would be paying at a discount off of</p> <p>4 WAC?</p> <p>5 A. Right.</p> <p>6 MR. NICHOLSON: Just subject to the market</p> <p>7 limitations he described in his previous answer.</p> <p>8 MR. NOTARGIACOMO: Can we take a short</p> <p>9 break?</p> <p>10 MR. CAVANAUGH: Yeah, sure, Ed.</p> <p>11 (A recess was taken.)</p> <p>12 BY MR. CAVANAUGH:</p> <p>13 Q. Do you have any -- let me ask it</p> <p>14 differently.</p> <p>15 Does Anthem -- or has Anthem over the years</p> <p>16 you've been with the company ever bought drugs itself?</p> <p>17 A. Here in Virginia, no. Anthem owns its own</p> <p>18 PBM which is located in Mason, Ohio. Now, they buy</p> <p>19 drugs, but this health plan administered in Virginia,</p> <p>20 no.</p> <p>21 Q. Has Anthem ever had a staff model HMO or</p> <p>22 any type of institution that would directly acquire</p>



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<p>1 drugs?</p> <p>2 A. No.</p> <p>3 MR. NICHOLSON: And just so you know, when</p> <p>4 he says "Anthem" we're talking about Anthem Virginia,</p> <p>5 and this is the Virginia entity, not Ohio or anybody</p> <p>6 else. They've already been deposed.</p> <p>7 BY MR. CAVANAUGH:</p> <p>8 Q. What interaction do you have with other</p> <p>9 Anthem companies?</p> <p>10 A. The non-Virginia --</p> <p>11 Q. Yes.</p> <p>12 MR. NICHOLSON: Right now he's asking those</p> <p>13 outside of the state.</p> <p>14 THE WITNESS: None, basically. I have no</p> <p>15 relation with any of them.</p> <p>16 BY MR. CAVANAUGH:</p> <p>17 Q. Would it be correct, then, that any Anthem</p> <p>18 company that has negotiated with Medco -- those</p> <p>19 agreements would be done on a company-by-company basis?</p> <p>20 A. If any company did; yes, they would be</p> <p>21 negotiated on a company-by-company basis.</p> <p>22 I mean, I assume all the health plans today</p>	<p>50</p> <p>1 A. No.</p> <p>2 Q. How did you go about evaluating -- well,</p> <p>3 strike that.</p> <p>4 Were you part of the group that would have</p> <p>5 evaluated whether to move to the -- whether to move the</p> <p>6 pharmacy benefits services from Medco to the Anthem</p> <p>7 entity?</p> <p>8 A. Not directly involved.</p> <p>9 Q. Were you indirectly involved?</p> <p>10 A. Sporadically, yes.</p> <p>11 Q. What input did you provide?</p> <p>12 A. You're basically making the business case,</p> <p>13 you know, cost benefit analysis. I mean, what's it</p> <p>14 going to cost compared to what we have today or what we</p> <p>15 could get in the marketplace, where are we going to gain</p> <p>16 or potentially lose because it impacts our customers.</p> <p>17 And, so, doing various analyses of network costs, of the</p> <p>18 cost of other services.</p> <p>19 Q. And what was -- how did the network costs</p> <p>20 compare?</p> <p>21 A. Compared to the 2001 agreement, we actually</p> <p>22 decided to negotiate a network with a little bit higher</p>
<p>51</p> <p>1 are covered up under Anthem's PBM.</p> <p>2 Q. Well, I'll get to that.</p> <p>3 Did there come a time when Anthem moved</p> <p>4 from contracting for PBM services with an outside</p> <p>5 company to contracting for PBM services with an</p> <p>6 Anthem-related company?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And when was that?</p> <p>9 A. Sometime during 2003 is when we began</p> <p>10 talking with APM, Anthem Prescription Management, about</p> <p>11 integrating up under their model and moving away from</p> <p>12 Medco.</p> <p>13 Q. And did Anthem Virginia do an analysis of</p> <p>14 the pros and cons of making that switch?</p> <p>15 A. Yes.</p> <p>16 Q. Did Anthem -- did the Anthem PBM -- well,</p> <p>17 strike that.</p> <p>18 Did Anthem Virginia do a request for</p> <p>19 proposal from multiple PBMs, including the Anthem</p> <p>20 entity?</p> <p>21 A. During 2003?</p> <p>22 Q. Yes.</p>	<p>53</p> <p>1 discount off of AWP. We kept the mail service</p> <p>2 reimbursement the same.</p> <p>3 Q. Now, when you say you negotiated, who did</p> <p>4 you negotiate with?</p> <p>5 A. The Anthem Prescription Management folks,</p> <p>6 Anthem's internal PBM.</p> <p>7 Q. And how much better was the reimbursement</p> <p>8 versus the Medco agreement on the retail side?</p> <p>9 A. The discount was 16 percent off AWP instead</p> <p>10 of 15.</p> <p>11 Q. And what about the dispensing fee?</p> <p>12 A. Dispense fees remained the same on the</p> <p>13 brand. On the generic we increased it a dollar. We</p> <p>14 wanted to try and incent pharmacies to dispense generic</p> <p>15 drugs -- better value for our customers.</p> <p>16 Q. And do you still have under the APM</p> <p>17 agreement multiple networks, or is it just one network?</p> <p>18 A. It's a single network.</p> <p>19 Q. So, it's a single network with a single</p> <p>20 reimbursement formula -- well, one for branded, one for</p> <p>21 generic?</p> <p>22 A. It's fairly complicated because there's not</p>

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<p>54</p> <p>1 one standard agreement. Based on what I've been told, 2 there are market areas across the country where the rate 3 is not 16 percent. So it does vary by market region, 4 but it's based on what the market will bear. If there's 5 a large chain in a given geographic region and you've 6 got to have them in your network and they say, I'm not 7 taking 16, then you negotiate with them and pay them 8 something different, probably a little less steep of a 9 discount, probably what they're willing to agree to, 13, 10 14, 15 percent.</p> <p>11 MR. NICHOLSON: Again, we have the 12 contract. That may help to give to him to take a look 13 at.</p> <p>14 THE WITNESS: But for the vast majority of 15 pharmacies in that network it's 16 percent off for 16 brands with a \$1.50 dispense fee.</p> <p>17 BY MR. CAVANAUGH: 18 Q. Now, would I be correct that the Anthem 19 PBM -- strike that. 20 How does the rebate arrangement with the 21 Anthem PBM differ from the rebate arrangement you had 22 with Medco under the 2001 agreement?</p>	<p>56</p> <p>1 There are pretty good margins in mail service claims, so 2 rather than giving that to another company why not keep 3 it internally. It will help us hold our costs down, and 4 we can pass those savings on to our customers.</p> <p>5 Q. In 2001, when you were -- strike that. 6 Am I correct that in 2000 for the new 2001 7 contract Anthem put out an RFP to which multiple PBMs 8 responded? 9 A. Yes, that's correct. 10 Q. Was it your sense that the different PBMs 11 were competing for Anthem's business? 12 A. Yes. 13 Q. Did your negotiations with multiple PBMs go 14 through a number of rounds of negotiations? 15 A. Yes. 16 Q. And during that was there a give and take 17 on various terms within each of the proposals? 18 A. Yes. 19 Q. And when you ultimately decided to go with 20 Medco was it because the entire package looked better 21 than what the other companies had been proposing? 22 A. Yes.</p>
<p>55</p> <p>1 A. Not seeing that agreement, it's my 2 understanding --</p> <p>3 MR. NICHOLSON: Well, don't speculate. If 4 you know, you know. If you need to see the agreement, 5 you can see the agreement.</p> <p>6 THE WITNESS: I don't know. I mean, not 7 for sure. I've not seen the agreement.</p> <p>8 BY MR. CAVANAUGH: 9 Q. Okay. What was the -- as you understood 10 it, what was the prime motivation, if there was one, to 11 move from Medco to Anthem's PBM? 12 A. There's -- you know, the operating income 13 you would derive from a mail service pharmacy business 14 in addition to more control over your benefits, your 15 formulary, your network, rather than dealing with an 16 external company that's governed by a contract you're 17 dealing with a sister company, and hopefully our goals 18 and incentives are all aligned to do what's right for 19 the customer. 20 But, I mean, PBMs exist to process claims. 21 They don't make any money doing that. They collect 22 rebates, and they typically fill mail service claims.</p>	<p>57</p> <p>1 (There was a pause in the proceedings.) 2 BY MR. CAVANAUGH: 3 Q. I should ask since you mentioned you worked 4 in retail and hospital pharmacy do you have a pharmacy 5 degree? 6 A. Yes. 7 Q. And when did you begin working in 8 pharmacies? 9 A. 1979. 10 Q. And did you work in pharmacies from '79 11 until you joined Anthem in '87? 12 A. No. I went back to school and got an 13 M.B.A. around the mid '80s. 14 Q. So, for roughly five years you were working 15 as a pharmacist? 16 A. Yes. 17 Q. Where did you get your M.B.A. from? 18 A. A local college, Virginia Commonwealth 19 University. 20 Q. Would I be correct that Anthem enters into 21 contracts with customers such as employers and union 22 benefit plans pursuant to which Anthem will provide</p>

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<p>58</p> <p>1 managed care services?</p> <p>2 A. Yes, I think that's a correct assumption.</p> <p>3 Q. Does Anthem pay -- strike that.</p> <p>4 Has Anthem entered into agreements with its</p> <p>5 customers to provide rebates?</p> <p>6 MR. NICHOLSON: You're asking him about the</p> <p>7 terms of the group contract?</p> <p>8 MR. CAVANAUGH: Yeah.</p> <p>9 THE WITNESS: I know we do have some groups</p> <p>10 where it's actually a part of their contract and we</p> <p>11 actually pay them a hundred percent of earned rebates.</p> <p>12 I think most of the time, pursuant to the 2001</p> <p>13 agreement, we're giving them an administrative credit</p> <p>14 that's a function of that guaranteed rebate amount and</p> <p>15 we're giving that to them up front as a credit to their</p> <p>16 administrative cost of doing business with us.</p> <p>17 BY MR. CAVANAUGH:</p> <p>18 Q. Okay.</p> <p>19 A. But it's a way of passing that money on to</p> <p>20 the group on a realtime basis rather than, like rebates,</p> <p>21 waiting nine to twelve months to collect them and then</p> <p>22 trying to figure out how to attribute them back to the</p>	<p>60</p> <p>1 think that was a new development compared to the old</p> <p>2 agreement.</p> <p>3 (There was a pause in the proceedings.)</p> <p>4 BY MR. CAVANAUGH:</p> <p>5 Q. To what extent did -- strike that.</p> <p>6 When Anthem was paying rebates back to its</p> <p>7 customers, to what extent did Anthem disclose the</p> <p>8 details of its arrangement with Merck-Medco?</p> <p>9 A. I think the agreements themselves bar us</p> <p>10 from disclosing any of those terms, so we would not have</p> <p>11 disclosed such terms.</p> <p>12 Q. In the course of negotiations with Medco</p> <p>13 did Anthem ever seek to gain the right to make such</p> <p>14 disclosures to its customers?</p> <p>15 A. To the best of my knowledge, no. We did</p> <p>16 have -- I mean, I mentioned before we paid some</p> <p>17 customers a hundred percent of all collected rebates,</p> <p>18 and --</p> <p>19 Q. Would that be something that had been --</p> <p>20 that you would do with some customers and not do with</p> <p>21 others?</p> <p>22 A. It was negotiated on a customer-by-customer</p>
<p>59</p> <p>1 group and...</p> <p>2 Q. Was there a point in time when that's the</p> <p>3 procedure that Anthem was utilizing?</p> <p>4 A. You mean paying actual rebates collected?</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. And is that something that changed under</p> <p>8 the '98 agreement with Medco?</p> <p>9 A. No.</p> <p>10 Q. When did that change?</p> <p>11 A. It changed with the 2001 agreement.</p> <p>12 Q. Okay. And in the 2001 agreement did</p> <p>13 Medco -- was one of the things you negotiated the</p> <p>14 elimination of an up-front administrative fee that Medco</p> <p>15 was charging Anthem?</p> <p>16 A. Say again?</p> <p>17 Q. As part of the 2001 agreement with Medco</p> <p>18 was one of the things that you negotiated the</p> <p>19 elimination of an up-front administrative fee?</p> <p>20 A. I -- it's my understanding we weren't</p> <p>21 paying an administrative fee before. I mean, I know we</p> <p>22 weren't paying one with the 2001 agreement, but I didn't</p>	<p>61</p> <p>1 basis, I think. It -- you know, we had to rely on the</p> <p>2 PBM to basically tell us, these are the rebate dollars</p> <p>3 for this group.</p> <p>4 Q. And when you say it was negotiated on a</p> <p>5 customer-by-customer basis, what would dictate whether a</p> <p>6 customer would end up getting all or some percentage of</p> <p>7 rebates?</p> <p>8 MR. NICHOLSON: Let me just note an</p> <p>9 objection that you're asking sales questions of a</p> <p>10 pharmacy employee, but to the extent you can answer it,</p> <p>11 please do.</p> <p>12 THE WITNESS: I'm not sure how rebates</p> <p>13 really were disseminated out to groups. It's my</p> <p>14 impression that anything that we could attribute back to</p> <p>15 a group's claims experience, we paid those moneys back</p> <p>16 to the groups. And I -- I mean, I think the</p> <p>17 differences, in my mind, for particularly an ASO</p> <p>18 account, we would pay a hundred percent of this</p> <p>19 negotiated 70 percent amount, but for some groups they</p> <p>20 actually wanted a hundred percent, so we had to make up</p> <p>21 that difference back to the groups for some of our large</p> <p>22 accounts, the 30 percent that Medco was withholding.</p>

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<p>1 Q. Would that be one reason why you would try 2 to eliminate that in the 2001 agreement? 3 A. And administratively they were problematic, 4 I mean, just to deal with, you know, collecting the 5 administrative things you needed to process rebates and 6 attribute them back to a group's experience. I mean, 7 administratively burdensome. 8 Q. And, so, do you recall that back in, 9 roughly, the middle of 2001 Anthem went from using this 10 rebate methodology to using a prescription drug 11 administrative credit? 12 A. Yes. 13 Q. And from Anthem's perspective what was the 14 benefit of using that administrative credit as opposed 15 to using rebates? 16 A. It was structured very similarly to the 17 rebate guarantees. In other words, it was an 18 administrative credit on a per-claim basis, or on some 19 lines of business I think it was a PMPM basis I think on 20 both it was either a PMPM or a per-contract by month, 21 but it was designed to where we could calculate it 22 easily because we had the group's eligibility, and, so,</p>	<p>62 1 that's correct. 2 BY MR. CAVANAUGH: 3 Q. And, to some extent, that would give Anthem 4 an advantage in negotiating with its customers, wouldn't 5 it? 6 A. It could. I mean, we wanted to use it as a 7 competitive advantage to, again, provide the credit up 8 front. They see it realtime, provide a set amount, it's 9 budgetable, you're not waiting to see what your rebates 10 are going to be nine-months from now and hope they're 11 good so it offsets your claims expense. We structured 12 it, in my opinion, in a way that we were trying to use 13 it as a competitive advantage in the marketplace for our 14 customers. 15 Q. Sure, but it gave Anthem the ability to 16 decide how much of the dollars it was getting back from 17 Medco it wanted to share with its customers. 18 A. Yes. 19 MR. CAVANAUGH: If you guys want to stretch 20 your legs, I'm going to look at my notes. I may be 21 close to being done. 22 (There was a pause in the proceedings.)</p>
<p>63 1 it was something similar to a per-claim basis. 2 Q. Would I be correct that a customer would 3 not know how much Anthem was getting from Medco in terms 4 of a guaranteed per-claim rebate? 5 A. You would be correct. 6 Q. Let's use an example. Let's say, for 7 example, you had your agreement with Medco -- I think we 8 looked at it -- had \$1.87 for a per-claim rebate to 9 Anthem. 10 A. Uh-huh. 11 Q. Under Anthem's administrative credit 12 arrangement with certain customers, let's assume they 13 gave back -- Anthem gave back a dollar. 14 A. Okay. 15 Q. Would I be correct that the customer 16 wouldn't know that there was 87 cents being retained by 17 Anthem? 18 MR. NICHOLSON: I object to the form of the 19 question. 20 THE WITNESS: I suppose that's correct. 21 They would not know, and we could not disclose those 22 terms, so there would be no way for them to know, yes,</p>	<p>65 1 BY MR. CAVANAUGH: 2 Q. When did you first become familiar with 3 this concept of PBMs? 4 MR. CAVANAUGH: Ed, we're back on. 5 MR. NOTARGIACOMO: That was a quick five 6 minutes, but I'm here. 7 MR. CAVANAUGH: Yeah, sorry. 8 MR. NOTARGIACOMO: Go ahead. 9 THE WITNESS: When did I first become aware 10 of a PBM and the concept of a PBM? 11 BY MR. CAVANAUGH: 12 Q. Yeah. 13 A. I know I was aware of it prior to coming 14 into this job around '97, '98. I have to do continuing 15 education to stay abreast, and, so, it's -- 16 Q. Yeah. Did Anthem Virginia ever consider 17 contracting directly with manufacturers for rebates? 18 MR. NICHOLSON: During his time in the 19 pharmacy area? 20 MR. CAVANAUGH: Yeah. 21 THE WITNESS: Yes. 22 BY MR. CAVANAUGH:</p>

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<p>66</p> <p>1 Q. When did your group first consider that?</p> <p>2 A. At the same time we were developing the RFP</p> <p>3 that resulted in this 2001 contract.</p> <p>4 Q. Do you know if it was considered back in</p> <p>5 the '97-'98 time period when you did that initial</p> <p>6 agreement?</p> <p>7 A. That I don't know. I never heard anything</p> <p>8 about it, so...</p> <p>9 Q. Well, in 2000 when you were developing the</p> <p>10 RFPs how far did your evaluation get of contracting with</p> <p>11 manufacturers directly?</p> <p>12 A. We actually probably talked to 18 to 20</p> <p>13 manufacturers about, you know, what they were willing to</p> <p>14 offer, and we had a pharmacy consultant working with us.</p> <p>15 Q. Who was that?</p> <p>16 A. It was called The Pharmacy Group -- they're</p> <p>17 out of Connecticut -- a fellow named Michael Sachs and a</p> <p>18 fellow named Perry Cohen.</p> <p>19 Q. Do you know where they are in Connecticut?</p> <p>20 A. Glastonbury. I mean, it's The Pharmacy</p> <p>21 Group, and it's just those two guys that came out of</p> <p>22 California. They worked for HMOs out in California and</p>	<p>68</p> <p>1 something different or -- it wasn't ingredient cost. I</p> <p>2 was mistaken about that. But it was something else. It</p> <p>3 was WAC.</p> <p>4 Q. How, in your own mind, do you differ WAC</p> <p>5 from ingredient cost?</p> <p>6 A. Ingredient cost is the network discounted</p> <p>7 amount. We said what WAC was earlier.</p> <p>8 So, whatever the network discount was...</p> <p>9 Q. And you're referring there to AWP minus 15</p> <p>10 plus a \$.25 dispensing fee?</p> <p>11 A. Correct.</p> <p>12 Q. To what extent did Anthem analyze the cost</p> <p>13 to a pharmacist compared to the total reimbursement</p> <p>14 amount being given to a pharmacist in terms of for a</p> <p>15 particular product?</p> <p>16 A. Are you asking, you know, did we look to</p> <p>17 try and determine what their profit margins were based</p> <p>18 on our network reimbursement?</p> <p>19 Q. Yes.</p> <p>20 A. We did not ever do any type of analysis.</p> <p>21 Q. Why not?</p> <p>22 A. Probably because we didn't want to -- I</p>
<p>67</p> <p>1 got a lot of experience.</p> <p>2 Q. How far did you get in your negotiations</p> <p>3 with manufacturers?</p> <p>4 A. It never really progressed past, you know,</p> <p>5 the discussion back and forth about each manufacturer's</p> <p>6 market basket of product and what they were willing to</p> <p>7 offer in terms of rebates for those products.</p> <p>8 Q. What type of -- so, did you get to the</p> <p>9 point where manufacturers actually said, we'd be willing</p> <p>10 to give you X amount of rebate?</p> <p>11 A. Yeah, for product ABC we'll give you 10</p> <p>12 percent of your billed amount or, you know, what you're</p> <p>13 actually paying for.</p> <p>14 Those contracts are not tied to AWP at all,</p> <p>15 they are -- you know, it's the discounted ingredient</p> <p>16 cost.</p> <p>17 Q. So, the rebate is based upon a discount off</p> <p>18 of -- would it be -- off of what?</p> <p>19 A. You know, now that I think about it --</p> <p>20 Q. Was it based on WAC?</p> <p>21 A. I think it was, for the most part. It</p> <p>22 seems like we had a couple of companies that were trying</p>	<p>69</p> <p>1 mean, we had no access to -- ready access to wholesale</p> <p>2 acquisition costs or individual pharmacies' agreements</p> <p>3 with wholesalers or suppliers, and, so, it would have</p> <p>4 been impossible for us to really accurately have</p> <p>5 estimated what a pharmacy was paying for its product.</p> <p>6 You know, at the point you stop having</p> <p>7 pharmacies participate in your network you know you've</p> <p>8 gone too far, and we were nowhere close to that, in my</p> <p>9 opinion, so they were still making money at AWP minus 15</p> <p>10 or AWP minus 16.</p> <p>11 Q. So, would I be correct that the way that</p> <p>12 you determined what your reimbursement rates would be</p> <p>13 was not so much based upon what their actual acquisition</p> <p>14 costs were but based on how you saw pharmacists reacting</p> <p>15 to the reimbursement rates you put out there?</p> <p>16 A. What will the market bear, yes. I mean...</p> <p>17 It's all economics 101. At the point they</p> <p>18 stop or scream too loudly you know you've gone too far.</p> <p>19 They tie their reimbursement drugs to things other than</p> <p>20 cognitive services and counseling, and that's a whole</p> <p>21 separate topic, but...</p> <p>22 Q. And by doing that they've given you the</p>



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<p>1 ability to ratchet down their margins?</p> <p>2 A. Correct. Well, we don't look at it like</p> <p>3 that. We're controlling our customers' costs.</p> <p>4 Q. It depends on what side of the table you're</p> <p>5 on?</p> <p>6 A. It does.</p> <p>7 Q. Let me go back to the manufacturers you</p> <p>8 were talking to. What services were you proposing to</p> <p>9 provide to the manufacturers in consideration for the</p> <p>10 rebates you were asking for?</p> <p>11 A. You have to send them your claims</p> <p>12 experience and, you know, they do their analysis and</p> <p>13 determine, you know, what their market share for their</p> <p>14 product is, and they define their market basket, if you</p> <p>15 will. You have to provide them that. You have to --</p> <p>16 their agreements basically offer incentives if you're</p> <p>17 willing to do things like restrict access to competing</p> <p>18 products.</p> <p>19 You know, if they're one of -- if they're</p> <p>20 the only choice within a category they'll pay higher</p> <p>21 moneys than if they're one of two or one of three.</p> <p>22 Q. So, essentially, what you were proposing is</p>	<p>70</p> <p>1 that. Do you want to tighten up your formulary to the</p> <p>2 point where you're limiting your ability to sell a</p> <p>3 product in the marketplace? And most people like</p> <p>4 choice. They don't like you telling them, you can have</p> <p>5 this one lipid drug, or, you can have this one</p> <p>6 antidepressant. They like to not be restricted.</p> <p>7 Q. And would I also be correct that the</p> <p>8 greater effort you put into ensuring formulary</p> <p>9 compliance and providing the service that the</p> <p>10 manufacturer is looking for in exchange for the rebate</p> <p>11 it's going to cost Anthem more money to do that?</p> <p>12 A. Correct. And it costs us something in the</p> <p>13 marketplace as well, and you have to balance the costs</p> <p>14 against -- you know, it's a cost/benefit analysis,</p> <p>15 basically.</p> <p>16 You make your best choice that you have</p> <p>17 with the facts that you have available to you. And we</p> <p>18 didn't think our rebates would come close to what Medco</p> <p>19 could offer us initially. There was some period of time</p> <p>20 where you had to ramp up operations and begin to build</p> <p>21 the entire --</p> <p>22 Q. Infrastructure?</p>
<p>71</p> <p>1 in lieu of a pharmacy benefit manager providing</p> <p>2 formulary, formulary compliance, drug utilization</p> <p>3 information, Anthem would step into that role.</p> <p>4 A. Correct.</p> <p>5 Q. And would I be correct, then, that what you</p> <p>6 did in 2000 is you analyzed the pros and cons of that</p> <p>7 approach and then the pros and cons of going with any</p> <p>8 one of the PBMs with whom you were negotiating?</p> <p>9 A. Correct.</p> <p>10 Q. And the end result was you decided to go</p> <p>11 with Medco?</p> <p>12 A. Correct.</p> <p>13 Q. Was it your sense, based upon the rebates</p> <p>14 that you were getting, the rebate proposals you were</p> <p>15 getting from manufacturers, that Medco was able to get</p> <p>16 better deals than Anthem?</p> <p>17 A. If you viewed it in total, yes. I mean, we</p> <p>18 thought we could, with some level of effort, you know,</p> <p>19 increase our rebates. If that was what we were really</p> <p>20 interested in doing, we could increase them over what</p> <p>21 they were at that point in time. It really becomes an</p> <p>22 issue of, you know, whether you want to actually do</p>	<p>72</p> <p>1 A. Right, that was the word I was trying to</p> <p>2 think of -- to begin collecting those rebates, but once</p> <p>3 you did, if you were willing to do certain things to</p> <p>4 drive utilization to the formulary products, you could</p> <p>5 do very well in terms of rebates.</p> <p>6 Ultimately, it was a strategy that we</p> <p>7 didn't think was worth pursuing, because typically you</p> <p>8 earn rebates on higher cost drugs, anyway. That's why</p> <p>9 manufacturers pay them; they want people to use them.</p> <p>10 And you're not -- you're not looking out for your</p> <p>11 customer long term. You're costing them more, really,</p> <p>12 even though you're earning higher rebates.</p> <p>13 Q. Based upon your participation in this</p> <p>14 exchange with manufacturers and your evaluation, did you</p> <p>15 conclude that ultimately you thought Anthem could have</p> <p>16 earned the same level of rebates as any other</p> <p>17 third-party PBM?</p> <p>18 A. Again, if you're willing to do what it took</p> <p>19 to maximize those rebate moneys, yes, I think you could</p> <p>20 have -- I think we could have.</p> <p>21 Q. Is the Anthem PBM seeking to maximize its</p> <p>22 rebates?</p>
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<p>74</p> <p>1 A. Again --</p> <p>2 MR. NICHOLSON: Object to form.</p> <p>3 THE WITNESS: I don't think we as a company</p> <p>4 still believe that chasing rebates is the best thing at</p> <p>5 the end of the day for the customer. You're still</p> <p>6 paying for more expensive drugs, and it's my impression</p> <p>7 APM doesn't pursue that strategy, either.</p> <p>8 I mean, I think because, you know, it's a</p> <p>9 cooperative relationship between the two companies that</p> <p>10 are held under one parent that they listen to us a</p> <p>11 little closer, and, so, they're not adding drugs to the</p> <p>12 formulary just to chase rebates.</p> <p>13 BY MR. CAVANAUGH:</p> <p>14 Q. Does the per-claim -- well, strike that.</p> <p>15 Did the per-claim rebate that you were</p> <p>16 getting from Medco -- strike that.</p> <p>17 Would I be correct that the per-claim</p> <p>18 rebate that you negotiated from Medco in the 2000</p> <p>19 agreement would have -- drug costs would have no bearing</p> <p>20 on that?</p> <p>21 MR. NICHOLSON: You mean the 2001</p> <p>22 agreement?</p>	<p>76</p> <p>1 and there were a few other things that put the</p> <p>2 guarantees at risk, but nothing substantive that ever</p> <p>3 concerned us. I mean, we always kept an eye on those</p> <p>4 issues that could have affected those guarantee amounts,</p> <p>5 but they never came into play at all.</p> <p>6 Q. Is there a disincentive for a PBM to put a</p> <p>7 higher price product in its formulary?</p> <p>8 A. Is there a disincentive?</p> <p>9 (Pause.)</p> <p>10 MR. NICHOLSON: Object to form.</p> <p>11 THE WITNESS: All other things being equal,</p> <p>12 efficacy of the drug, safety of the drug, a more</p> <p>13 expensive product only increases the customer or whoever</p> <p>14 is paying for that claims cost. So whether it's us, if</p> <p>15 we're fully insuring a group, or whether it's a large</p> <p>16 ASO account, that customer is going to see their claims</p> <p>17 cost go up.</p> <p>18 BY MR. CAVANAUGH:</p> <p>19 Q. And, so, that creates a disincentive for</p> <p>20 the PBM when they're out there trying to compete for</p> <p>21 your business, doesn't it?</p> <p>22 A. Yes.</p>
<p>75</p> <p>1 MR. CAVANAUGH: Yeah.</p> <p>2 THE WITNESS: I think you're correct in</p> <p>3 that statement. Drug costs would have no relationship</p> <p>4 to that per-claim rebate amount that they're paying us.</p> <p>5 I mean, they weren't tied to anything specifically other</p> <p>6 than our promise to work with you, Medco, to do what's</p> <p>7 right for both of us.</p> <p>8 And that's exactly what we did, we worked</p> <p>9 through issues that we had where they wanted us to add a</p> <p>10 drug to the formulary and we said, no, we're concerned</p> <p>11 about the cost of that drug or that particular category,</p> <p>12 and, so, we don't want to at this point in time, and</p> <p>13 then, you know, it was -- we never just told them no and</p> <p>14 then backed away from the table, it was always an</p> <p>15 ongoing discussion, and I think it worked fairly well.</p> <p>16 BY MR. CAVANAUGH:</p> <p>17 Q. I mean, at the end of the day Anthem had</p> <p>18 the ability not to put a drug on its formulary, correct?</p> <p>19 A. Correct. There were certain thresholds. I</p> <p>20 mean, if -- I think if a certain amount of our business</p> <p>21 migrated away from that \$15 differential on the --</p> <p>22 within the managed plans the guarantees were at risk,</p>	<p>77</p> <p>1 Q. Because if you look at a formulary that's</p> <p>2 stocked with high-priced drugs you're going to -- one of</p> <p>3 the things you would recognize when you're evaluating</p> <p>4 that formulary is that it's going to produce potentially</p> <p>5 higher costs for you.</p> <p>6 A. Correct, and our customers.</p> <p>7 Q. So, when you're negotiating with the PBM</p> <p>8 one of the things you're looking at -- in fact, at the</p> <p>9 end of the day what you're looking at is what's the</p> <p>10 total cost going to be of doing business with this</p> <p>11 particular PBM and the services and formularies it</p> <p>12 offers.</p> <p>13 A. Correct. I mean, that's correct, you look</p> <p>14 at the entire thing. There are some drugs where you</p> <p>15 know it's the most expensive in the class. You maybe</p> <p>16 don't like that drug, but based on the strength of the</p> <p>17 manufacturer you know you're not going to be able to</p> <p>18 take that drug off your formulary or disincen your</p> <p>19 customers to stop using it, so you kind of weigh that</p> <p>20 and make a decision about the overall value of the</p> <p>21 complete package.</p> <p>22 There's some things where you give up a lot</p>

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<p>78</p> <p>1 but you get something over here, so it kind of balances 2 out.</p> <p>3 Q. And that's from Anthem's perspective, 4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And isn't the PBM doing the same thing in 7 terms of balancing; maybe it will get some rebate 8 dollars, but at the same time by putting high-priced 9 drugs in its formulary it's creating a less attractive 10 package for Anthem, correct?</p> <p>11 A. Yes.</p> <p>12 MR. CAVANAUGH: All right. I don't think I 13 have any further questions.</p> <p>14 Ed, do you have anything?</p> <p>15 MR. NOTARGIACOMO: Nope, not for this 16 witness.</p> <p>17 MR. NICHOLSON: He'll read and sign as 18 well.</p> <p>19 (The witness did not waive signature.) 20 (The deposition concluded at 3:41 p.m.) 21 22</p>	
<p>79</p> <p>1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit: 2 I, Heidi L. Jeffreys, RDR, CRR, a Notary 3 Public for the Commonwealth of Virginia at Large, of 4 qualification in the Circuit Court of the City of 5 Norfolk, Virginia, and whose commission expires June 30, 6 2008, do hereby certify that the within deponent, 7 D. B. MORRIS, appeared before me at Richmond, Virginia, 8 as hereinbefore set forth, and, after being first duly 9 sworn by me, was thereupon examined upon his oath by 10 counsel; that his examination was recorded in Stenotype 11 by me and reduced to typescript under my direction, and 12 that the foregoing transcript constitutes a true, 13 accurate, and complete transcript.</p> <p>14 I further certify that I am not related to 15 nor otherwise associated with any party or counsel to 16 this proceeding, nor otherwise interested in the event 17 thereof.</p> <p>18 Given under my hand and notarial seal at 19 Norfolk, Virginia, this _____ day of _____ 20 2005.</p> <p>21 _____ 22 Heidi L. Jeffreys, RDR, CRR Certification No. 0413283 Notary Public</p>	

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